

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION
CASE NO. 1:12-cv-800-WTL-TAB

JUDICIAL WATCH, INC.,
and TRUE THE VOTE,

Plaintiffs,

v.

J. BRADLEY KING, et al.

Defendants.

The deposition upon oral examination of
J. BRADLEY KING, a witness produced and sworn before
me, Rachel L. Tookolo, a Notary Public in and for the
County of Hamilton, State of Indiana, taken on behalf
of the Plaintiffs at the Indiana Government Center,
South Building, 302 West Washington Street, Conference
Room 5, Indianapolis, Marion County, Indiana,
commencing on the 30th day of May, 2013, pursuant to
the Applicable Rules of Procedure with notice as to
time and place thereof.

ALLIANCE COURT REPORTING
P.O. BOX 78261
INDIANAPOLIS, IN 46278-0261
(317) 875-3914
1 (877) 867-8600
www.alliancecourtreporting.com

EXHIBIT

A

1 A Yes, that's correct.

2 Q And what were the -- what were the requirements?
3 Were the requirements that the office obtain that
4 list?

5 A Yes. The previous law had authorized but had not
6 specifically required the office to obtain the
7 Social Security Death List.

8 Q Anything else that comes to mind?

9 A There are several provisions related to voter
10 registration. They run quite a gamut.

11 Q Would you say that they're two of the bigger
12 provisions related to list maintenance?

13 A I would -- I would say I'd also include the
14 obtaining information from other states regarding
15 deceased voters through the Steve and Eve systems
16 that are referenced in the bill.

17 Q Tell me a little bit about the Steve and Eve
18 Systems.

19 A As I understand them, the Steve and Eve Systems
20 are operated by a Secretariat for a lack of a
21 better word. State Health Administrators in some
22 but not all states across the country in that
23 Consortium, they share similar data about the
24 deaths of individuals and then can provide that
25 information to other governmental agencies for

1 purposes such as voter list maintenance.

2 Q So Senate Bill 519 requires Indiana to participate
3 in these two databases?

4 A Indiana had already joined through its Department
5 of Health the Steve and Eve Databases, but the
6 legislation specifically authorized the use of the
7 data for voter list maintenance purposes.

8 Q And when did Indiana join through its Department
9 of Health?

10 A I don't have direct knowledge, but from what I've
11 read, within the last year or so. Fairly recent.

12 Q So upon joining, the legislature has now
13 authorized additional measures to require
14 specifically the use of that data for list
15 maintenance; is that accurate?

16 A That would be accurate.

17 Q Anything else about 519 that comes to mind?

18 A We have a provision that I think allows a very
19 common sense measure, and that is the use of
20 published obituaries and notice of a state
21 administration to allow local voter registration
22 offices to cancel decedents. In many cases, the
23 County Voter Registration Offices have advised us
24 that they know from personal office or from local
25 media that an individual has died, but they

1 disagreements between the Co-Directors concerning
2 either expenditures of money or activities to be
3 undertaken in regards to list maintenance,
4 correct?

5 A Yes, that's true.

6 Q And then House Enrolled Act 1391 was designed to
7 solve that by adding a tie-breaking vote by the
8 Secretary of State when the Co-Directors are
9 deadlocked concerning list maintenance; is that
10 accurate?

11 A That is accurate.

12 Q Tell me about some of the disagreements that you
13 can recall between yourself and your Democratic
14 counterpart over list maintenance in the past.

15 A Well, I should say they have been consistent and
16 extensive through the time that I've served. I've
17 had several different individuals serve as my
18 Democrat counterparts. The first instance that
19 comes immediately to mind is the Social Security
20 Administration Death List. We were able to agree
21 to obtain that on one occasion, in 2003 I believe.
22 There were some problems encountered in one county
23 with the use of the information from the list, and
24 after that I would make offers to have our agency
25 purchase the Social Security List which is not

1 particularly expensive, but I could never get
2 agreement from any Democrat counterpart.

3 Q So that would be an example of a disagreement that
4 has occurred over the years?

5 A Yes, that's correct. I would add that probably
6 one of the more significant disagreements for the
7 purpose of this proceeding would be with regard to
8 the Consent Decree and efforts to obtain the
9 extension of its term.

10 Q And so you said there was a disagreement between
11 you and the Co-Director concerning the Consent
12 Decree, and this would be the 2006 Consent Decree
13 with the Department of Justice?

14 A That would be correct.

15 Q And there were discussions between you and the
16 Co-Director about extending the term of that
17 Consent Decree?

18 A Discussion between the two of us and also with
19 representatives from the Department of Justice.

20 Q And what were those -- how would characterize
21 those discussions? I take it you disagreed?

22 A I thought the extension of the Consent Decree
23 should be considered. The Department of Justice
24 representatives whom we spoke to -- this was by
25 conference call; I don't recall immediately who

1 impasse. I think there were certainly occasions
2 in following up with counties under the Consent
3 Decree where the timing and the content of
4 communications were ones that we did have initial
5 agreement on but were able to reach some sort of
6 compromise.

7 Q And going back to the disagreement about the --
8 obtaining the Social Security Deceased Persons
9 Database, did you agree with your counterparts
10 rationale as to why you should not obtain the
11 list?

12 A No, I did not.

13 Q And why is that?

14 A Because I felt that the issue was primarily one of
15 training county voter registration officials and
16 that -- and 91 other counties to all of our
17 knowledge and information, the task was carried
18 out competently, although I'm sure in a project of
19 that size, human error would result until some
20 mistakes, but there was no systemic problem.

21 Q And when it came time to decide whether to enter
22 into the Kansas Consortium for Interstate
23 Crosscheck, you disagreed with your colleague's
24 opinion. Why was that?

25 A I felt that the Kansas program had been developed

1 over a number of years, and although the number
2 states participating has risen quite -- to quite a
3 high number more recently -- I believe 22 or 23 --
4 even at that time, more than a dozen states were
5 involved. And my discussions with my counterparts
6 from Kansas in particular and some of the other
7 participating states, they had not encountered any
8 problems with administering the results --
9 processing the results that they received from the
10 data match.

11 Q So you felt it could have been implemented
12 effectively?

13 A Yes.

14 Q And it would have helped maintain accurate voter
15 rolls in the State of Indiana?

16 A Yes, certainly.

17 Q And then when you came to your decision by your
18 counterpart not to with the -- not to extend the
19 Consent Decree, why did you disagree with that?

20 A I felt that there had been some tools provided in
21 that Consent Decree that were not available to us
22 in state legislation primarily, and we had no
23 tiebreaker, if you will, as we have by virtue of
24 House Enrolled Act 1391. And so we were losing
25 those potential tools to carry forward on the

1 A Yes. That's what I was referring to, yes.

2 Q And those were not continued after the expiration
3 of the Consent Decree?

4 A The system has the ability to generate the
5 reports, but no, there was not a meeting of the
6 Co-Directors to review the reports and take action
7 based on what the report showed.

8 Q And anything else you can remember that the
9 Consent Decree gave you that you liked?

10 A I suppose in more general terms, helping to
11 enforce or reinforce the importance of voter list
12 maintenance as part of our training efforts for
13 county voter registration, county election
14 officials.

15 Q And in the Consent Decree, was there also a
16 provision concerning Notice of Violation letters
17 from the Co-Directors to the counties to be issued
18 in certain circumstances?

19 A Yes, that's correct.

20 Q And was that something that you found to be
21 helpful during the time of the Consent Decree?

22 A Yes, certainly.

23 Q And was it continued after the expiration?

24 A No, not -- certainly not in the format that had
25 been used under the Consent Decree. We did have

1 is that right?

2 A Yes, that would be correct.

3 Q And had that been done previously?

4 A Not in the fashion that I believe the legislation
5 envisions. The NCOA information regarding address
6 forwarding orders, for example, is not one that
7 we've obtained previously from the Postal Service.
8 We have had some data, like checking the validity
9 of an address when it's entered into the system.

10 Q Were there any discussions between you and the
11 Co-Director about obtaining that information
12 previously?

13 A During the period prior to the Consent Decree, I
14 believe there was. But again, my counterpart did
15 not indicate a willingness or interest in doing
16 that. I don't recall any discussions about that
17 afterwards.

18 Q Do you remember your counterpart's rationale for
19 not wanting to obtain that information?

20 A I think, again, it focused on reliability of data.
21 I recall that, again, in one county -- in
22 Monroe -- the County Voter Registration Office had
23 initiated its own NCOA program and had reported
24 problems with false matches or incorrect
25 information. And so I think my counterpart

1 after that I took the lead about communicating
2 with the Department of Revenue, so I don't recall
3 any statements she made about it.

4 Q Did you also communicate with the Department of
5 Justice concerning those -- those investigations?

6 A We provided, pursuant to the Consent Decree, the
7 correspondence with the Department of Revenue.
8 And during our conference calls with the
9 Department of Justice, I communicated the
10 conversation with our Department of Revenue.

11 Q Now, is there an Indiana state law requiring
12 county officials to submit affidavits that they
13 have performed voter list maintenance tasks?

14 A Yes, there is.

15 Q And how often under this law are county officials
16 required to submit those affidavits?

17 A Under the current version of the law, there is no
18 specific deadline or period for them to do so.

19 Q And with as that law revised during the recent
20 legislative process?

21 A Yes, it was. It was revised in Senate Bill 519 to
22 require the affidavit to be executed and filed I
23 believe no later than 77 days before the election
24 that reflected the 90-day period under federal law
25 for the completion of most voter list maintenance

1 activities. So another two weeks following that
2 for the county to file the affidavit with the
3 Election Division that those tasks had been
4 completed.

5 Q That sounds more specific than the old
6 requirement.

7 A Well, considerably more than the most recent
8 version of the law. The original version back in
9 1987 required this filing with the County Auditor
10 rather than with the State.

11 Q And then the more recent version prior to this
12 spring required filing with the State, but not at
13 a specified time?

14 A That's correct.

15 Q Had the counties been filing those affidavits
16 frequently?

17 A No, not frequently.

18 Q About how many of those affidavits would you say
19 you'd seen in the past starting with -- between --
20 going back to 2009?

21 A I would say no more than a dozen.

22 Q And prior to that, had the compliance with that
23 provision been increased or greater?

24 A No, I don't think there was a significant
25 difference prior to that. There was a significant

1 change from the original statute that probably had
2 a major impact on the filing. The original
3 statute in 1987 called for the filing of the
4 affidavit each October with the County Auditor.
5 The penalty provided in the statute was -- the
6 rationale for filing with the Auditor which was if
7 the affidavit was not filed, the County Voter
8 Registration Officer's salary for October would
9 not be paid. That statute was away repealed in
10 1995, and since that time, there was not a
11 specific schedule set forth in the statute for
12 filing affidavits. And so they -- they were not
13 filed in large numbers since that point.

14 Q Is the new law requiring filings on specific dates
15 going to be a benefit to your office in monitoring
16 county performance?

17 A Certainly.

18 Q And was the -- and conversely, was -- the lack of
19 compliance previously, was that inhibiting your
20 ability to maintain an adequate monitoring over
21 the counties?

22 A I don't think I could characterize it as
23 inhibiting because it was, in essence, a
24 self-reporting, so I don't think "inhibited".

25 Q Would you view this as an effective tool for the

1 State Election Division to ensure that counties
2 are doing their job, complying with the law under
3 penalty?

4 A Yes.

5 Q Do county officials typically understand how the
6 inactive voter lists are supposed to be used?

7 A Typically, I would say "yes".

8 Q So do you find they generally are familiar with
9 the requirement to wait two general elections --
10 one presidential, one midterm -- before removing a
11 voter on the inactive list?

12 A I would say -- again, they are generally -- we
13 emphasize this restriction on the cancellation of
14 inactives at every conference or almost every
15 conference where we get into voter registration.
16 So yes, I would think they would be.

17 Q Ever encounter any confusion from the counties on
18 that issue?

19 A Yes. There have certainly been some counties who
20 did not understand the inactivation procedure, the
21 length of time required until cancellation. I
22 would say those are probably relatively isolated.
23 I can think of two or three counties that had
24 actual problems that resulted from this
25 understanding of that.

1 asked, if you can remember?

2 A Just whether they had had problems with either
3 their Department of Health hopper. In the past,
4 there had been some data backlogs that we had
5 experienced and worked with the Department of
6 Health to correct. I don't think we had any
7 discussion about Department of Correction. In
8 terms of Bureau of Motor Vehicles, usually the
9 questions involved processing the paper copies
10 that arrived, along with electronic copies, to
11 make sure that address changes or other
12 information was getting their attention promptly.
13 I know at least one county that I believe
14 subsequently did carry out a mailing -- Warrick
15 talked with us about the mechanics and
16 requirements for doing a countywide mailing.

17 Q And when you had asked those questions, did you
18 uncover -- first starting with the first item you
19 mentioned -- did you uncover problems with the DOH
20 hopper?

21 A There had been previous problems, but I don't
22 think there were any new problems uncovered as a
23 result of these conversations.

24 Q And previous problems -- you're talking about
25 problems in the years gone past?

1 A Yes. I believe it would have been shortly
2 before -- in 2010 perhaps. There was a serious
3 backlog of data entry at the registrar's office at
4 the Department of Health that had delayed that
5 information getting to the counties, and they were
6 aware of that for the reasons that we talked about
7 earlier that they knew an individual who had died
8 but had still not received notification through
9 the DOH hopper.

10 Q So in investigating a situation, did you find that
11 that 2010 backlog had been mostly resolved by
12 2012?

13 A Yes. Yes, we had worked with the Department of
14 Health to identify the problem and DOH made some
15 internal changes to address that, so I'm not aware
16 of any ongoing problem.

17 Q So it doesn't appear to be the cause of the voter
18 roll totals?

19 A No, not to my knowledge.

20 Q And then how about the Bureau of Motor Vehicles
21 processing paper versus electronic copies for
22 address changes? What did your investigation
23 uncover?

24 A That there was no significant problem that was
25 occurring there. Again, that was a past problem

1 administration of federal elections. And so that
2 particular account was the source we used to pay
3 mailing costs and processing.

4 Q So the did that come from the federal government?

5 A Yes. It was a 95 percent/5 percent state match, I
6 believe. But yes, almost entirely from federal
7 government.

8 Q Does -- does the NVRA require annual statewide
9 mailings that you're aware of?

10 A No.

11 Q We've talked a lot about the SVRS as well --
12 you've talked a lot about that, I should be clear.
13 Is the SVRS -- is that a static system or have
14 there been changes to it over the years.

15 A Oh, it's been a evolving system since the
16 beginning. We build into our budget for its
17 operation upgrades to reflect changes in
18 legislation or feedback from County Voter
19 Registration Offices about ways to make the system
20 work more efficiently. So yes, we spend a
21 significant amount of time to identify the changes
22 we need to make and a fair amount of money to make
23 it.

24 Q Why do you want to make it more efficient?

25 A Well, because I think it's the responsibility of

1 any public office to the taxpayers to reduce costs
2 and also to improve in confidence and the
3 integrity of the election process. This accuracy
4 of the system contributes to that.

5 Q Does the NVRA require states to use the Social
6 Security Death Index as part of voter list
7 maintenance?

8 A No.

9 Q Do they require the use of NCOA data for -- I
10 should be more clear on that one. Scratch that.
11 Do you know what the NVRA requires with respect to
12 NCOA notices?

13 A Well, it's in reference to the procedures to make
14 a record inactive. That's the reference I'm
15 recalling immediately. We sometimes refer to the
16 second mailing as the NCOA notice because it's the
17 result of an initial mailing that's been returned
18 with typically a yellow sticker that reflects data
19 from the NCOA program.

20 Q You mentioned you're in conversation with the
21 counties about the SVRS. Do you get a lot of
22 suggestions from them?

23 A Yes. Perhaps fewer than when we first implemented
24 the system, but we have what we call a CAT, or
25 County Advisory Team, conference call more